

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1908.

No. 1917.

570

BALTIMORE AND OHIO RAILROAD COMPANY,
A CORPORATION, APPELLANT,

vs.

HARRISON CROOK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JUNE 23, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1908.

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In the Court of Appeals of the District of Columbia.

No. 1917.

BALTIMORE AND OHIO RAILROAD Co., a Corporation, Appellant,
vs.
HARRISON CROOK.

a Supreme Court of the District of Columbia.

At Law. No. 49755.

HARRISON CROOK, Plaintiff,
vs.
THE BALTIMORE & OHIO RAILROAD COMPANY, a Corporation,
Defendant.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:—

1 *Declaration, &c.*

Filed August 22, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49755.

HARRISON CROOK, Plaintiff,
vs.
THE BALTIMORE & OHIO RAILROAD COMPANY, a Corporation,
Defendant.

The plaintiff, Harrison Crook, sues the defendant, the Baltimore & Ohio Railroad Company, a corporation, having an office and doing business in the District of Columbia as a common carrier of passengers and freight, for money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant; and for work done and materials provided by the plaintiff for the defend-

ant at its request; and for money lent by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant at its request; and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them; and for professional services rendered for the defendant at the instance and request of the defendant; *and* the plaintiff claims the sum of six thousand, three hundred and sixty-one dollars (\$6,361.00), with interest from the 5th day of March, 1907, according to the particulars of demand hereto annexed.

WILTON J. LAMBERT,
W. FOWLER,
EDWARD McLEAN,
Attorneys for Plaintiff.

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Notice to Plead.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and Legal Holidays occurring after the date of service hereof; otherwise judgment.

WILTON J. LAMBERT,
W. FOWLER,
EDWARD McLEAN,
Attorneys for Plaintiff.

Affidavit.

I, Harrison Crook, on oath say that I am a physician engaged in the practice of medicine and surgery in the District of Columbia, and have been engaged in the practice of medicine and surgery in the District of Columbia for the past 29 years; that on, to-wit, the 30th day of December, 1906, I was employed by the duly authorized agents of the Baltimore & Ohio Railroad Company, the above named defendant, to render medical and surgical skill and attention to a number of persons who had been so unfortunate as to be victims of a serious accident which occurred on what is known as the Metropolitan Branch of the Baltimore & Ohio Railroad Company, at or near a station known as "Terra Cotta" in the District of Columbia; that I was specially employed by said company to attend Mrs. Anna M. Moore; Mrs. Blanche Cooly; Mr. Clinton M. Moore; Master Joseph Kunlo, and Mr. Raymond J. Cooly; that the injuries

3 sustained by Mrs. Anna M. Moore, Mrs. Blanche Cooly, and Mr. Clinton M. Moore were of a very serious and aggravated character, and required great labor, skill and attention, and great surgical skill; that I was advised by said company to employ such assistance as might be necessary in the line of consultation and nursing as would be proper for the best treatment to the injured persons; that in accordance therewith I employed for consultation and assistance Dr. William G. Erving, in reference to the case of Mrs. Anna M. Moore and Mrs. Raymond Cooly; and also employed Dr. James F. Mitchell for consultation in connection with the injuries to Mr.

Clinton M. Moore; that the services rendered by Dr. Erving were reasonably worth to Mrs. Anna M. Moore the sum of \$100. and to Mrs. Raymond Cooly, four hundred dollars (\$400), and the services rendered by Dr. Mitchell were reasonably worth the sum of one hundred dollars (\$100).

I further say that I employed the services of a nurse, Miss Arcander, to give certain treatments to Mrs. Cooly and Mrs. Moore; that said nurse gave eighteen (18) treatments to Mrs. Moore at three dollars (\$3) per treatment, and nineteen (19) to Mrs. Cooly at the same rate.

I further say that in regard to a number of the parties mentioned the railroad company has paid said parties considerable sums of money in settlement of their claims of damages against the company, and that in each instance, either in writing or verbally, the said company has agreed and contracted to settle the bills due me on account of services rendered at the request of said defendant corporation to said parties.

4 I further say that the charges made as shown by the Bill of Particulars are fair and reasonable for the services rendered; and that I am entitled to the amount claimed in full, exclusive of all set offs and just grounds of defense.

HARRISON CROOK.

Subscribed and sworn to before me this 20th day of August, 1907.

[SEAL.]

WALTER S. T. BROWN,
Notary Public, D. C.

Pleas.

Filed September 12, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49755.

HARRISON CROOK, Plaintiff,
vs.

BALTIMORE AND OHIO RAILROAD COMPANY, Defendant.

Now comes the defendant and for plea to the declaration filed in the above-entitled cause says that it is not indebted as alleged.

2. And for a further plea to said declaration the said defendant says that it never undertook and promised as alleged.

GEORGE E. HAMILTON,
Attorney for Defendant.

5 STATE OF MARYLAND, *Baltimore City, To-wit:*

Personally appeared before me, a Notary Public in and for said State and City, Clarence W. Egan, who being duly sworn deposes and says that he is the general claim agent of the Baltimore and Ohio Railroad Company, and has personal knowledge of the matters hereinafter set forth, and is authorized by said defendant to make this affidavit. Affiant further avers that as general claim agent he had the entire charge of the settlement of claims and suits grow-

ing out of the accident which happened on the Metropolitan Branch of the Baltimore and Ohio Railroad Company at Terra Cotta on or about the 30th of December, 1906, and that no other agent or employee of the defendant had any authority or undertook as a matter of fact to employ physicians to take care of those persons who were injured in said wreck, except upon the express direction and authority of this affiant. Affiant further avers that the said defendant is not indebted to the plaintiff in any sum whatever. He denies emphatically that he or any agents of the defendant company employed the said plaintiff to render medical and surgical attention to any person who was injured in said accident, and he denies that he or any agents of said defendant, by his authority or otherwise, specially employed the said plaintiff to attend Mrs. Anna M. Moore, Mrs. Blanche Cooley, Mr. Clinton M. Moore, Master Joseph Kunlo and Mr. Raymond J. Cooley, and affiant avers the fact to be that the

6 said plaintiff was not employed by the said defendant or by this affiant, or any other agent or employee of said defendant to render services to said parties, or any of them. Affiant further denies that said plaintiff was advised by said defendant to employ such assistance as might be necessary in the line of consultation and nursing as would be proper for the best treatment of said injured persons, or that he was ever authorized to employ such assistance by this affiant or any other employee of the defendant company, on the authorization of this affiant, and he avers that the statements contained in the affidavit of the plaintiff to the effect that he was employed by the agents of said defendant company to render medical or surgical services to the persons named in said affidavit, and was advised by said company to employ such assistance in the way of consultation and nursing as might appear to him to be necessary, are maliciously false. This affiant has no knowledge as to whether the said plaintiff did, as a matter of fact, employ one Dr. William G. Irving in reference to the case of Mrs. Anna Moore and Mrs. Raymond Cooley, and employed Dr. James F. Mitchell for consultation in connection with the case of Mr. Clinton M. Moore, or that he employed the services of Miss Arctander to give certain treatment to Mrs. Cooley and Mrs. Moore, or as to what the services alleged to have been rendered by said parties were worth. He avers the fact to be, however, that if said parties were employed by Dr. Crook, it was without authority from the said defendant or of this affiant or of any other employee of the said defendant who was authorized to make such contract. This affiant further denies that he

7 or any other authorized agent of the defendant ever agreed either verbally or in writing to settle any bills that might be presented by the plaintiff for services rendered any of the persons injured in the Terra Cotta wreck. Affiant further avers, as hereinbefore set forth, that he has had entire charge of the matter of handling settlements of all claims growing out of the Terra Cotta wreck; that he not only never did employ the plaintiff to attend any of the persons injured in said wreck, or authorized any one to employ said plaintiff in said matter, but that he has no personal acquaintance with the plaintiff whatever, having met him only once casually, at which time nothing whatever was said about the plain-

tiff being employed by the defendant or by this affiant. Affiant further avers on information and belief that the charges made by the plaintiff for services rendered as set out in his bill of particulars are not only not fair and reasonable, but are grossly exorbitant in proportion to the actual services rendered to the persons named in said bill of particulars.

CLARENCE W. EGAN.

Subscribed and sworn to before me this 7th day of September, A. D. 1907.

[SEAL.]

GEO. W. HAULENBEEK,
Notary Public.

My commission expires May 1, 1908.

8 *Joinder of Issue.*

Filed September 20, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49755.

HARRISON CROOK, Plaintiff,
vs.

THE BALTIMORE & OHIO RAILROAD COMPANY, a Corporation,
Defendant.

The plaintiff joins issue upon the pleas of the defendant filed to the declaration herein.

WILTON J. LAMBERT,
Attorney for Plaintiff.

Amended Bill of Particulars.

Filed March 4, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49755.

HARRISON CROOK, Plaintiff,
vs.

THE BALTIMORE & OHIO RAILROAD COMPANY, a Corporation,
Defendant.

The Baltimore & Ohio Railroad, to Dr. Harrison Crook, for professional services rendered the following victims of the Terra Cotta wreck, Dr.

9 Mrs. Anna M. Moore:

For professional services rendered from about the 30th day of December, A. D., 1906 to about the 9th day of March, A. D., 1907, about seventy-four (94) visits, including treatment for fracture in the right leg just above the ankle, sprained ankle. Rupture of the lateral ligaments of the knee joint, including the boney attachments thereto, etc. Treatment for severe shock to the nervous system of patient, etc.,..... \$1200.00

Mrs. Blanche Cooly:

For professional services rendered from about the 30th day of December, A. D., 1906 to about the 8th day of March, A. D., 1907, about ninety-four (94) visits, including treatment for fracture of three ribs on the right side and compound fracture of the left arm with subsequent operations, including wiring of the bones, etc. Treatment for severe shock to the nervous system, etc.,. \$1600.00

Joseph Kunlo:

For professional services; treatment for simple fracture of the right leg just above the ankle, necessitating setting of the fracture and application of several casts, during January, 1907,..... \$150.00

Raymond J. Cooly:

For professional services, rendered from about the 30th day of December, A. D., 1906, to about the 1st day of February, A. D., 1907, including treatment for fracture of the right clavicle (collar bone), accompanied by extensive displacement or deformity. Also various cuts about the face and head,..... \$200.00

Clinton M. Moore:

For professional services rendered from about the 30th day of December, A. D. 1906, to about the 6th day of March, A. D., 1907, about ninety-two visits. Including treatment for compound comminuted fracture of the left leg, general blood poisoning with severe abscesses about the neck. Deep cut extending to bone in the forehead. Cut in back of head to the bone, every cut being infected. For amputation of leg which had become infected. Constant attention and frequent dressings being required because of the toxic condition of the blood. Treatment for nervous shock and general depression, etc..... \$2500.00

Services of Miss Artander for massage, treatment and exercise of joints. Eighteen treatments to Mrs. Moore and nineteen similar treatments for Mrs. Cooley,..... \$111.00

Assistance of Dr. William G. Erving, including about four consultations in treatment of Mrs. Moore and four hospital visits to Mrs. Moore and assistance in arranging and placing braces, x-rays, etc.,..... \$100.00

Assistance of Dr. William G. Erving, including about ten consultations and five hospital visits and assistance in performing the operations referred to and dressings upon Mrs. Blanche (Raymond) Cooly..... \$400.00

Assistance of Dr. James F. Mitchell in four consultations in connection with services rendered and treatment of Mr. Clinton M. Moore,..... \$100.00

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Memoranda.

March 12, 1908.—Verdict for plaintiff for \$4476.00.

April 6, 1908.—January Term of Court prolonged 38 days to settle exceptions.

Supreme Court of the District of Columbia.

FRIDAY, *April 10th*, 1908.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice, presiding.

* * * * *

No. 49755. At Law.

HARRISON CROOK, Plaintiff,

vs.

THE BALTIMORE & OHIO RAILROAD COMPANY, a Corporation,
Defendant.

Upon consideration of the motion for a new trial filed herein, it is ordered that said motion be, and the same is hereby overruled, and judgment on verdict is ordered. Thereupon, it is considered and adjudged, that plaintiff herein recover of defendant herein, the sum of Four Thousand Four Hundred and Seventy-six Dollars (\$4476.00) with interest from this date, together with costs
13 of suit to be taxed by the Clerk, and have execution thereof.

From the foregoing judgment, the defendant, by its attorneys, in open court, notes an appeal to the Court of Appeals; whereupon, bond to operate as a Supersedeas is fixed in the penalty of Eight Thousand Dollars.

Memorandum.

April 16, 1908.—Appeal bond filed.

Supreme Court of the District of Columbia.

THURSDAY, *May 14th*, 1908.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice, presiding.

* * * * *

No. 49755. At Law.

HARRISON CROOK, Plaintiff,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY, Defendant.

The Court having this day signed the Bill of Exceptions heretofore submitted herein, now orders that the same be, and hereby is made of record as of the time of the noting thereof at the trial.

14 Further, upon motion of defendant by its attorney in open court, the time within which to file a transcript of the record herein in the Court of Appeals is hereby extended to the 24th day of June 1908, included.

Bill of Exceptions.

Filed May 14, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49755.

HARRISON CROOK, Plaintiff,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY, Defendant.

Be it remembered that the above-entitled cause came on for trial before Mr. Justice Anderson and a jury on the 9th day of March, 1908.

Whereupon the plaintiff to maintain the issues on his part joined, offered himself as a witness, and testified as follows:

I have been actively practicing medicine and surgery in the District of Columbia for nearly thirty years. I am one of the visiting surgeons of the Providence Hospital. We had a board of four surgeons, each one taking three months in the year for attendance at the Hospital, as chief of the staff. In 1906 I had charge of the Hospital for October, November and December, and then my
15 services as chief of the surgical staff ended at that time. I was in charge of the Hospital as visiting surgeon on December 30, 1906. The Terra Cotta wreck took place on the 30th of December, 1906. I received a telephone call to hurry to the Hospital as there had been an accident, and I was needed. I went as quickly as I could and found a number of people who had been injured and were in a suffering condition, and we worked to relieve them and make them comfortable. They were assigned to various rooms in the hospital, and being in charge of the Hospital at that time—I had only one more day to serve—I took charge of the patients and directed what should be done for them. I received a telephone message from a doctor in this city the next day or the day following, and he said he had been out to the wreck and had charge of a patient; that he was employed by the Road and that he wanted to meet me in consultation at the Hospital to follow up the case. I told him that I would be there at eight o'clock in the morning. In the meantime I went down to the B. and O. Station and had a talk with a man I saw there about it—it was somebody in the office there; and he put me in communication with Mr. Egan, saying that he had nothing to do with the matter. Then I talked with Mr. Egan over the telephone and told him about this circumstance, and asked him if he wanted these various doctors to continue the cases or whether he wanted me to follow them up; he said that he would call them off

and let me have charge of the cases. I heard nothing more then from the other doctors on the outside, and I went on with the cases from that time. I got to the Hospital about nine o'clock that night,

16 but I think the accident took place about half past six. The patients reached the Hospital between nine and half past. I attended Mrs. Anna M. Moore for the injuries described in the bill of particulars. I attended her from the 30th of December until about the 9th of March, and made ninety-four visits. I employed assistance in connection with Mrs. Moore's case. Her injuries were of such a peculiar nature and being very anxious to do everything for her that possibly could be done, I asked Dr. Irvine to assist me because he is an expert in that particular work—work about joints. He is an orthopedic surgeon. His practice is confined to work about joints entirely, or things of that character. He made four hospital visits in connection with Mrs. Moore's case, and assisted me in arranging her bandages and casts. Especially was his work valuable with reference to the brace that had to be made. It had to be measured for and made of a peculiar nature, so as to hold the leg in position to prevent lateral swinging. I could not get any assistance in the house in that line because the men were not experts in such things. They could do any kind of work under my direction; but that was something that I got Dr. Irvine's advice about because I thought he knew more about it. I had X-ray pictures made of Mrs. Moore's injured limb, and various plates showing the different injuries were offered in evidence; and I employed Miss Arctander to manipulate her joints and to rub the leg. The occasion for this was that Mrs. Moore could not use the leg very well herself, and the rubbing helped it. That gave it exercise without the patient exercising it herself. It helps circulation and helps the nourishment

17 of the leg. I think Dr. Irvine's charge was very reasonable for that kind of service. I think the charge I make for services in that case of \$1200. is perfectly fair, certainly not high for the amount of work and the amount of responsibility and care. After the conversation I had with Mr. Egan on the telephone, I did not meet him until the latter part of February. I do not know the exact date. I then met him for the first time in Mr. Fowler's office on F street. He came in while I was there. I was talking to Mr. Fowler and was just about ready to leave, when Mr. Fowler said "Wait a minute; here comes Mr. Egan now." Mr. Egan came in and Fowler introduced him to me. I said to Egan "I am very glad to see you. I thought you were a minister, you have such a benevolent face." So we had a pleasant little talk for a moment in a general way. He apparently was there to see Fowler on business, so after a little while I thought I would go, and I said to him that I had some assistance in connection with this work. I asked him about sending in bills, &c., and I said "shall I send the bills of those who assisted me too?" He said "Yes, send them all down, but don't let them stick me." I said "All right" that I wouldn't let them stick him. Then we parted. I sent my bill after that and got the other bills and sent them all in, but I did not receive any check. I did receive quite a number of letters with reference to the bills, a few days after they had been

sent. I got a letter with reference to each claim I think. The letters which you hand me bearing date April 17, 1907, are the letters that I refer to.

Whereupon counsel for plaintiff offered said letters in evidence. One of said letters being in the words and figures following:

"The Baltimore and Ohio Railroad Company.

Office of the Claim Agent.

C. W. Egan.

BALTIMORE, MD., *April 17, 1907.*

Accident to Train 66, Terra Cotta, D. C., Dec. 30, 1906.

Dr. Harrison Crook, The Sherman, Washington, D. C.

DEAR SIR: In the matter of your bill for the treatment of Mr. Raymond J. Cooley, I beg to advise you that the same is exhorbitant and beyond all reason. As soon as you reduce this bill upon a reasonable basis, I will be glad to take it up for adjustment at once.

(S'g'd)

C. W. EGAN."

Also similar letters were offered in evidence in relation to the claim of plaintiff for services for attending the following persons: Joseph Kunlo, Anna M. Moore, Blanche Cooley and Clinton M. Moore.

Also a letter under the same heading, of date April 24, 1907, which letter is in the words and figures following, to-wit:

19

"BALTIMORE, MD., *April 24th, 1907.*

Accident to # 66, Terra Cotta, D. C., Dec. 30, 1906.

"Dr. Harrison Crook, The Sherman, Washington, D. C.

"DEAR SIR: Replying to your favor of the 19th inst. I beg to return herewith your bills for treatments in the injury of Raymond J. Cooley, Master Joseph Kunlo, Mrs. Blanche Cooley, Mrs. Anna M. Moore, and Clinton M. Moore, which I think are exhorb-ant, unreasonable, and without precedent, irrespective of what you say about their reasonableness.

I think you, as well as other professional men, are trying to take advantage of us on account of this accident, and I don't propose to stand for it. I would much rather let a jury decide what you are entitled to, than pay these bills.

Very truly yours,

(Signed)

C. W. EGAN,s."

I attended Mrs. Blanche Cooley for the injuries set out in the bill of particulars; I paid Mrs. Cooley in the neighborhood of ninety-nine visits. The operation of wiring the bone was a difficult one the

tissues have to be cut down to the bone and bring the bones through this opening and wire them together again, and then return
20 them to their place and *and* sew up the cut; you have to be very careful of infection; did not have any infection in this case; had X-rays made of her injuries. Thereupon counsel offered in evidence these various plates. I employed Miss Arctander in connection with Mrs. Cooly's case. She rubbed the arm and manipulated the joint, and I employed Dr. Irvine in connection with Mrs. Cooly's case. The wiring of the bone and getting a good result was a matter of very great importance, because the arm was perfectly useless without union of the bone, so I wanted to be absolutely certain that I was doing the right thing. I did not want to take any chances so I got assistance. I do not remember the number of Miss Arctander's treatments, but it was about eighteen or nineteen. She charged \$3.00 a visit, and gave a treatment of an hour each time. I think her charges were very reasonable. Dr. Irvine's charge of \$400. for work done in connection with Mrs. Cooly's case seems very reasonable. He was very attentive and gave faithful assistance. Miss Arctander's bill for services to Mrs. Moore was reasonable.

I attended Joseph Kunlo for a fractured leg just above the ankle. Both bones were broken that had to be carefully adjusted &c. His condition was not so very serious as to need so much watching. Had X-ray plates made. My charge of \$150.00 for his case was very reasonable. I required no assistance in his case. I arranged his dressings four or five or six times probably, but there was not very much to do for him after we got his bones adjusted. His condition was never serious.

I attended Raymond J. Cooly for the injuries described
21 in the bill of particulars. There was great displacement.

His dressings had to be changed quite frequently in order to keep his bones in opposition so as to get union. I think I must have seen him twenty-five or thirty times. I charged \$200. for his case. I think the charge very reasonable.

I attended Mr. Clinton M. Moore for the injuries described in the bill of particulars. His leg became so infected that there was no possible chance to save it, and so amputation became necessary in order to save his life. I performed the operation. I had the advice of Dr. Mitchell before the operation was done, with reference to his poisoned condition. The operation itself I performed with the assistance of the house surgeon. Mr. Mitchell is a surgeon in the City, and is connected with Providence Hospital, one of the visiting surgeons. I paid Mr. Moore between ninety-two and ninety-four visits, and amputated his leg about one week after the accident. I charged \$2500. for attending him, including everything, and I think the charge was perfectly fair and reasonable. Dr. Mitchell charged \$100. for four consultations. They range anywhere from \$10. to \$500. and his charge was very reasonable. These patients did not have medical attention from any other physician, and received attention from no one other than myself and the young men employed as house physicians, who acted under my directions. I asked them if they wanted anybody else, and they said they did not. I

think my whole bill, amounting to \$6,361.00, is very reasonable for the amount of work and the responsibility.

On cross-examination witness said:

22 I am a surgeon as well as a general practitioner. Ordinary physicians sometimes set bones, but in these days they do not as a rule. They get the assistance of a surgeon. I do not get paid for charity work at Providence Hospital, but do get paid by private patients. If I do work for Providence Hospital it is work in the wards, but when patients are in private rooms, it is not Providence Hospital work, and we get paid for all of those cases. Patients in private rooms have the right to have their own physician, but if they are brought to the Hospital and are assigned to us by the Hospital, they pay us for the work. If I go to the Hospital and find a patient in a private room I would go in to see him and talk about his case and ask him if he wanted me to care for him, and if he says he does, then I go on and treat him. I had no special acquaintance with any of the persons named in the bill of particulars before the accident. Don't remember that I had ever attended any of them. On the night of the accident I received a message from somebody in authority at the hospital to come at once. I was sent for and nobody requested me to look after these injured people. I did it as a matter of duty when I got there. A Sister sent for me. No one told me they were private patients at that time. We did not go into that just then. We were trying to do them some good. I usually go to the hospital every day, and sometimes three or four times a day, but my services ended on January 1st. On such occasions I see all of the people who were under my charge. If they are in private rooms, and they are private patients, I charge them. My talk with Mr. Egan over the telephone was a couple of days

after the accident. I don't just know what day it was. Some-
23 one in the office at the station put me in communication with him. I went down there to know whether they wanted me to continue in charge of these cases or get somebody else. They had not seen me about the matter up to that time, but I had the cases in the hospital. I did not go down there to solicit employment by them. I simply went down there to give them a chance to let me continue on or get somebody else. I did not understand at that time that I was to charge the people I was treating in the private rooms at the hospital. I had not made up my mind what to do. I supposed that the cases belonged to the B. & O. Railroad, and that they were going to be responsible for them. A doctor called me up and wanted to meet me in consultation about these different cases. He said that he had seen one of them at the wreck, and he wanted to continue with the case. I wanted to know from Mr. Egan whether he wanted me to continue with the case, or wanted me to take the cases. I went down and called him up and had this talk with him over the phone. He said "I will call the other doctors off and leave you with the cases." Dr. Monroe was the doctor who called me up and said he wanted to consult with me about one of these cases, Mrs. Cooly's case I think. The subject of his conversation was that he wanted to meet me in consultation about this case, that

he had seen the case at the wreck and wanted to follow it up, and I wanted to know from Mr. Egan who he wanted to take charge of the cases. I had never seen Egan before that and did not know where his office was. I went down to the B. & O. office and saw some employee there who put me in communication with Mr. Egan.

24 I told him over the phone I was in the hospital and had charge of these B & O cases in the hospital and had been looking after them, and that I wanted to know whether he wanted me to continue or whether he wanted another Doctor to continue. I told him that this doctor and probably others would be coming on pretty soon, and he said I will call them all off, and leave you with the cases. I don't think I specified any particular cases. I had ten of the cases, but these particular cases are the ones that have not been settled for. The others were settled for.

Q. By whom?

Mr. LAMBERT: I object.

The COURT: I do not see any place for this testimony at this stage of the case. There has been no testimony in chief that would make it proper cross-examination. He is only seeking to recover for services rendered to these five injured people; and it does not make any difference how many other people he treated who paid him, unless you expect to show that they all stood upon the same plane, and that it was so understood and agreed between them on that occasion.

Mr. COLBERT: I do absolutely.

The COURT: You have not brought out anything thus far in this telephone talk, to the effect that there was any distinction made as to what particular patients should be charged for, and the only patients that were charged for were these five.

25 Mr. COLBERT: He says himself that the telephone talk was that he was to attend the people injured in the Baltimore & Ohio wreck generally, without naming any of them. Now, we have the extraordinary spectacle here of a man who says he was employed to attend to all of them, and yet we have him, two months afterwards, coming along with a bill for five of them against the Baltimore & Ohio Railroad, and the rest of them not in that same category at all.

The COURT: Suppose he should answer that they paid their own bills; what would you claim?

Mr. COLBERT: I would claim that he should have charged these people just like he charged the rest of them and have brought his suit against those people instead of bringing it against us.

The COURT: And you would claim that simply because they paid?

Mr. COLBERT: Because the others paid under the same authorization, exactly; according to his own statement.

The COURT: The objection is sustained.

To which ruling of the court in sustaining said objection the defendant then and there duly excepted, and said exception was noted upon the minutes of the Court.

The WITNESS: The B. & O. Railroad Company did not pay me

anything directly for services to the five persons treated by me outside of those named in the declaration. I mean that they paid the money directly to the claimants themselves, and they paid me. I know this is so because the other parties told me so, but no officials of the Railroad Company ever told me that the amount of my bill for these other parties was included in the settlement. I never saw any of these patients professionally after they left the hospital.

26 I could not give the exact date of my telephone talk with Egan. It was sometime after the wreck, but it may have been the next day or the day following. I am not positive about that. It may have been the next day or the day following, I am not sure about that. My term of service at the hospital expired on December 31st, but I continued in charge of these cases because they were private cases and I had a right to keep on with the private cases I had in the hospital. Dr. Mitchell succeeded me at the hospital. The only time I ever saw Egan was at Fowler's office. At that interview I did not inform him that I had employed some assistant to help me. I told him it was necessary to have some assistance in some of the cases and I asked him if I should include their bill when I sent mine. I thought I had the right to do whatever was good for the patient. I had not been authorized by any railroad officials to employ assistance. I think when a doctor is employed by a patient, he does whatever he can for that patient's good, and whatever he thinks is for the patient's good. If he thinks it is for the patient's good to get counsel he does so. I would feel authorized to employ assistance by way of consultation without first getting authority from the patient.

I met the Surgeon in Chief of the Baltimore & Ohio Railroad in connection with this investigation; I don't know his name, he was introduced to me by Dr. Battle in the hospital; I was told that gentleman was the Chief Surgeon of the road. I asked him to see the cases and asked him if he had any views to give. He says "No, go on with the cases, they are yours." Mr. Egan asked me at Fow-

27 ler's office for a statement as to the condition of the injured people. Requests were made of the hospital. I was asked several times; but the attorneys on the other side objected in particular cases and I would not send them because they objected, but I did send in a statement with reference to Mrs. Cooley I think.

Q. Although you were employed by the Baltimore and Ohio Railroad Company and were requested to send them a statement as to the condition of these people, you refused to do it because the attorneys on the other side, as you put it, objected to it? A. I did not know whether I had the right to do it or not. I did not know what to do, and I simply did not send them. By attorneys on the other side I mean the attorneys who had charge of the patients' claims against the road. When I attend a patient whatever I do for him is his business and I cannot go around and talk about it. The request for the information came through the hospital. They asked the hospital for information and the hospital referred it to me, and I said I had no right to give it. The office I went in at the station to telephone to Mr. Egan was in the basement, to the left as you enter the door.

There was a gentleman in there sitting at a big table; I did not talk over the public phone; I talked over a phone sitting at the table. I don't know that man's name; he was a very pleasant gentleman with a black mustache.

On re-direct examination witness said:

Q. As I understand you, when you had that telephone conversation with Mr. Egan the arrangement or word that you received over the phone was to take general charge of these patients? A. That was my understanding.

Q. Is that what was said? A. That was what was said. Among the patients injured in this accident who paid me was a little girl and Mrs. Kunlo and a young man named Brodinack. They paid me after I had this trouble with the railroad in reference to my bill. They agreed with me that they would not settle with the railroad company unless my fee was included.

Q. In connection with this general authority which you had over the telephone, would that as a matter of fact, in your opinion, include the right to employ assistants necessary in connection with the operations?

To which question counsel for defendant objected on the ground that it was calling for an opinion from the witness, but the court overruled the objection, to which ruling of the court the defendant then and there excepted, and said exception was noted upon the minutes of the court.

The COURT: You are asking him from the standpoint of a surgeon put in charge of a case.

Mr. LAMBERT: I am asking him, as he understood the conversation over the telephone at that time, as to the instructions that were given.

The COURT: I think the way you have put the question it is perhaps a little too broad. You may say—did it, as you understood it.

To which question as amended counsel for defendant objected, but the court overruled the objection; to which ruling of the court defendant then and there excepted, and said exception was noted upon the minutes of the court.

The WITNESS: I understood that I was to take care of these cases, and that carried with it the right to do whatever was proper to care for these unfortunate injured people.

Mr. Egan was the general claim agent of the B. & O. Railroad Company.

Recross examination:

I have not paid the bills of Dr. Irvine, Dr. Mitchell and Miss Arctander, but I incurred these bills and I feel responsible for them.

Whereupon the plaintiff to further maintain the issues on his part joined called as a witness JOHN WESLEY BOVEE, who testified that he was a physician and surgeon and had practiced in the Dis-

trict of Columbia for 24 years. Witness also testified in answer to hypothetical questions covering the cases of the persons named in the bill of particulars, as to what would be fair and reasonable charges for services rendered in such cases by a surgeon, and the amounts fixed by him were in excess of the amounts charged by plaintiff in said bill of particulars. Also that the charges for consultation and for massage treatment set out in the bill of particulars were fair and reasonable.

Q. What would be the professional duties of a physician or surgeon having in general charge patients suffering as I have outlined to you here?

To which question counsel for defendant objected on the ground that the question involved a proposition of law
30 and called for the conclusion of the witness, and that under the authorization on which plaintiff relies would make no difference what witness thought about it. But the court overruled the objection, to which ruling of the court the defendant then and there excepted, and said exception was noted upon the minutes of the court.

The WITNESS: I would think it was his duty to render his professional services and anything that was needed for the welfare of the patient, which might include, and very likely would include, the services of nursing and of any special skill and assistance that he would feel necessary to employ in the care of the patient.

Witness further testified that if a person was suffering with an injury to his arm, and it is in a paralyzed condition, as outlined here, he would think it advisable and proper to have massage treatment, and that would apply to any other limb of the body.

Cross-examination:

If I was employed by a patient to attend him for some disease, or for a simple fracture of a bone, I would feel that I had authority to employ another physician without his consent. Of course I should be conscientious about such a thing as that, but I would act according to the way my judgment dictated, and if I felt the patient needed it, I would call another doctor. Ordinarily I would think that I should consult the patient about it, but not necessarily.

Whereupon the plaintiff, to further maintain the issues on his part joined, called as witnesses Dr. GEORGE T. VAUGHAN, Dr.
31 JAMES F. MITCHELL and Dr. WILLIAM G. IRVINE, who gave testimony similar to that of the witness Bovee as to the value of services of Dr. Crook and of the assistants employed by him. Witness Vaughan was asked the following question:

Q. I would ask you, Doctor, what is the custom or what would be proper in connection with the treating of the patients I have referred to, assuming you had general orders to take charge of those patients?

Mr. COLBERT: We make the same objection, if the court please,

that it is for the jury to say here what the authority covered, and not for the witness to say what he thinks.

The COURT: I think that is a different question from the one I passed upon before. The objection is sustained.

Q. What would your professional services include if called upon to treat the patients I have referred to under general instructions to take charge of those patients? A. If I had general instructions; general authority to take charge of the patients, I should have them taken to a proper hospital or building, engage the proper nurses, and supply them with everything that was needed. If I needed a consultation, I would send for a physician or a surgeon. If I had such instructions as I understand you to mean that I should have, I would feel I had authority to do anything that was needed for those patients.

Whereupon the plaintiff to further maintain the issues on
32 his part joined called as a witness CLINTON M. MOORE, who testified as follows:

I was in the Terra Cotta wreck on December 30, 1906, and was taken to Providence Hospital, where Dr. Crook attended me; I was put in a private room. I made a settlement with the Railroad Company concerning my injuries. In fact I had three settlements with them: one for my child, one for my wife and one for myself. For my wife and child I settled with Mr. Schutte. For myself I settled with a man named Lamb. Schutte and Lamb were assistant claim agents of the B. & O. They made a settlement with me and gave me a check in settlement signed by Mr. Egan, claim agent of the B. & O. In the settlement for my wife and child, Mr. Fowler, Sister Berchmans and Sister Antonio were present. In the settlement for myself, Mr. Fowler and Sister Berchmans and the claim agent in each case. It is Mr. Schutte was present in the first case and Mr. Lamb in the second. My wife was also present in the settlement of the claims for herself and child.

On cross-examination witness said:

I dealt with Mr. Schutte and Mr. Lamb in closing the settlements. The negotiations were carried on by my attorney, Mr. Fowler with Mr. Egan. I never saw Schutte or Lamb until they brought the checks to me. Mr. Egan was to see me but we had a very short conversation over the settlement. I received \$14,250 in settlement of the three cases.

On re-direct examination witness was asked the following question:

33 Q. I will ask you what that settlement included? To which question counsel for defendant objected, but the objection was overruled, to which ruling of the court the defendant then and there excepted, and said exception was noted upon the minutes of the court. A. That settlement was to come to me clear of all expenses whatever, clear of all hospital and doctor's expenses.

Counsel for defendant thereupon moved the court to strike out the witness's answer for the reason that no promise of any kind made by a representative of the Railroad Company to witness in connection with the doctors' bills and out of the presence of the doctor, could be given in evidence in this case.

The COURT: No, you have opened the door and they may go into it fully.

And the court overruled said motion, and allowed the answer to stand, to which ruling of the court defendant then and there excepted, and said exception was noted upon the minutes of the court.

The WITNESS: At the time the settlement was made, Mr. Lamb, Mr. Fowler and Sister Berchmans were present.

Q. What was said by Mr. Lamb with reference to the settlement as to what it included?

To which question counsel for defendant then and there objected on the ground that said settlement was evidenced by a release in writing, which was the best evidence, and on the further ground that the witness had testified that the settlement had been made by his attorney with Mr. Egan, and it is not shown that he was authorized to make any statement concerning payment of doctors' bills or hospital bills. But the court overruled the objection, to
34 which ruling of the court the defendant then and there excepted, and said exception was noted upon the minutes of the court.

The WITNESS: Mr. Lamb presented me a check in settlement of my case, and he said "This is clear to you of all expenses. We bear the hospital expenses and your doctors' bills, and this is clear to you above everything." Dr. Crook had charge of my case, and Dr. Mitchell had been to see me several times, and the young doctors of the hospital called a number of times. At the time of the settlement of the claims of my wife and child, my wife, Sister Berchmans, Sister Antonio, Mr. Fowler, Mr. Schutte and myself were present. Mr. Schutte represented himself as being an assistant claim agent of the B. & O.

Q. What was said with reference to that settlement at that time?

To which question counsel for defendant then and there objected for the same reasons as set forth in the objection to the question previously asked the witness as to what was said by Mr. Lamb, but the court overruled the objection, to which ruling of the court the defendant then and there excepted, and said exception was noted upon the minutes of the court.

The WITNESS: At first there was only Mr. Fowler and myself there, with my wife, and he gave me a check in settlement for my wife. I said to him: "Don't you think that the agreement that the doctor's bill and the hospital expenses should be paid by the railroad ought to be in writing?" He said "It is not necessary at all. We will attend to that." I said: "Well I want more witnesses
35 here" so Mr. Fowler then got Sister Berchmans and Sister Antonio. I would not settle until they came. They came in

the room and Mr. Schutte said to them "We are settling with Mr. Moore and his wife for their claims against the Railroad in the Terra Cotta wreck, and we want it understood that we will stand all hospital expenses and all medical attention incurred, and, furthermore, Sister, you know we always keep our word." I accepted the check and signed the release. The check was signed by Mr. Egan, and was for \$5500.

On re-cross examination witness said:

I don't think Dr. Crook was present when either of these statements were made. He was not my physician before I was taken to the hospital, and I did not know him before that time.

Whereupon the plaintiff to further maintain the issues on his part joined called as a witness Sister MARY BERCHMAN, who testified as follows:

I have charge of Providence Hospital, and know Mr. Clinton M. Moore and his wife. I was present when the settlement was made between Mr. Moore and the Railroad Company's representative. I think one occasion was about the middle of February and the other was just before the patients left the hospital in the first part of March. I remember there were two gentlemen present at these settlements, but I did not hear their names.

Whereupon the plaintiff to further maintain the issues on his part joined, called as a witness RAYMOND COOLY, who testified as follows:

36 My wife and I were in the Terra Cotta wreck, and were treated at the Providence Hospital by Dr. Crook; and Dr. Ervin assisted. I made a settlement with the Company for myself and my wife.

On cross examination witness said:

I know Dr. Monroe, and he is not my family physician. Dr. Crook never treated my wife or myself before this accident.

This was the substance of all the evidence offered on behalf of the plaintiff.

Thereupon the defendant to maintain the issues on its part joined called as a witness C. W. EGAN who testified as follows:

I am general claim agent of the Baltimore and Ohio Railroad Company, and was such in December 1906. I had nothing to do with the taking of the five injured persons mentioned in the bill of particulars to Providence Hospital, and did not know them. I did not send them to the Hospital and did not know Dr. Crook, or have anything to do with employing him to look after them. No one in my Department had any authority to employ him. A few days after the accident I called at the hospital to see how they were getting along. I did not know then who was attending them. The first information I had that Dr. Crook was attending them was when the question of adjustment came up. We found out that

Dr. Crook was their physician. It is not true that I had a conversation with Dr. Crook over the telephone a day or two after the accident with regard to his employment by me or by the Railroad Company in connection with these injured persons. I never had a

37 talk with Dr. Crook in my life, either on the phone or orally, except one time and that was months afterwards. The

Company has a staff of four or five surgeons employed in Washington. I first saw Dr. Crook at the office of Mr. Fowler, who was attorney for some of the injured people. When I entered the office Dr. Crook was just leaving, and Mr. Fowler introduced me. The only talk I had with him at that time was that I inquired why I could not find out what was the matter with the people in the hospital. I don't suppose there were a dozen words spoken. I asked him why I could not get a certificate about the people in the hospital. I had sent my assistants to the hospital to obtain the information as to how the injured were getting along, and when I asked Dr. Crook the reason for this he referred me to some lawyers, and told me that they would give me a certificate. I never employed Dr. Crook, either in writing or verbally, and none of my assistants had any authority to do so. Dr. Crook sent me his bill for attending to persons named in the declaration some time after the accident, and during the negotiations for a settlement with the various claimants. In reply to those bills I wrote the letters which were offered in evidence by the plaintiff. Dr. Crook did not say anything to me at Mr. Fowler's office about his having employed assistance in attending these cases, and I never did say to him "Send the bills but don't let them stick me." No such statement was ever made. He said nothing at that interview about sending his own bill, and I never had any conversation with him over the telephone, or any other correspondence. Referring to the statement in these letters that if the bills were reduced to a proper basis, I would take them

38 up for adjustment, I will say that our course of procedure in settling claims is this: We get all of the expenses to which an injured person has been put, his loss of time, &c., and after adding all of these together, then we talk adjustment and settlement of his claim. We include all these elements of loss and damage. We have settled with all of the people named in the declaration. In fact with everybody who was injured in the Terra Cotta wreck with the exception of two. In the old B. & O. Station there was one telephone at the Bureau of Information, in the basement on the left as you entered, and the other was in the office of the terminal agent, Mr. Legge. Mr. Henderson was in the terminal agent's office at the time of the accident, and Joe Hurney was in the Bureau of Information. Mr. Legge was home sick at the time of the accident.

On cross examination witness said:

I have been general claim agent three years, and employ twenty-six assistant agents. I had about ten assistants at one time working on the Terra Cotta cases, and after that possibly five. Three men who were constantly on that work were A. A. Schutte, F. H. Lamb

and William Butler. Personally I took care of very few of the cases, possibly not more than a dozen. I settled with these five but not directly; I did it through my assistants. Mr. Butler, Mr. Schutte and Mr. Lamb were working on them. My assistants would go to see these injured people in the hospitals and report to me; they would take a record of the names of the people who were taken to the hospitals, where they were and how being cared for and report to me. When the accident happened, I was in Baltimore, but I immediately came to Washington and remained in the depot, and saw the injured people as they came in, and were placed in the various hospital ambulances. The ambulances took the victims to the various hospitals as soon as possible, but I did not go to any of the hospitals until about three or four days after the accident. Some of my assistants went to the hospitals to get a record of the names of the people who were taken to each hospital, and submitted their reports to me. Sometimes I would come over here every day. After the accident I was here for a week, with my headquarters at the terminal agent's office downstairs. I was not there all the time, but was in and out, but I made it a point to keep in touch with the station, to let them know where I could be found. I conferred with my assistants frequently, but had no regular meetings with them. I did not know who the physicians were at the different hospitals handling the cases until I came to settle a particular case. I knew that Dr. Crook was at Providence Hospital, but did not know that he was in charge. I am positive that I never had any telephone conversation with Dr. Crook. I was pretty busy during those days. There were about 104 persons injured and killed in the Terra Cotta wreck; 61 of these were injured. The company's surgeons were attending to such of the injured persons as were known to them. These surgeons are employed by the Relief Association of the Company to give aid to the injured employes or other persons. I don't know how they are paid. They are not on my staff. They were at Terra Cotta the night of the wreck. There were a number of employees injured as well as passengers. I think it was in April 1907 that I saw Dr. Crook at Fowler's office. I went there to see Fowler about the settlement of the Moore case. I think. It might have been in May, or in March. I can not give you the exact date. The conversation I had with Dr. Crook was about as follows: When I was introduced to him, I said, "Doctor, why is it that we can not get certificates from the injured in the hospital"—because I sent my assistants up there and was trying to find out, and it was with great difficulty I could find out whether a man had his head chopped off or his leg chopped off. I could not find out anything, and we thought it was rather strange. That was the first thing I said to him. Dr. Crook stated to me "These lawyers forbid me giving you a certificate." That was all there was to it. Dr. Crook then went out and I left about two minutes afterwards. He did not say he did not want to get himself in any trouble. He said the lawyers forbade him to give any certificate to me. I am positive he sent me no certificate. After this conversation I did receive some

of his certificates, sent through the attorneys. Dr. Crook did not say to me at Fowler's office that he took me for a minister, and I have detailed the only conversation that I had with him. Mr. Fowler was the only other person present. I have authority to settle with people who have been injured, including their doctors' bills. I make numbers of settlements through my assistants and agents. In connection with my conferences with Mr. Fowler relative to settlement of the cases controlled by him, I did not tell him or agree that the Company would pay Dr. Crook's bill.

On re-direct examination witness said:

My assistants, Mr. Schutte and Mr. Lamb had no authority from me to contract any doctors' bills, and they were subject entirely to my orders. No one else on behalf of the Railroad Company except Mr. Hamilton and myself, had any authority to make any of these settlements. I think a few days after meeting Dr. Crook at Mr. Fowler's office I received a certificate as to the condition of an injured party. I think it came from Dr. Crook.

Thereupon the defendant to further maintain the issues on its part joined called as a witness Dr. ADOLPH MONROE, who testified as follows:

I am a practicing physician, and had occasion to call at Providence Hospital to see Mrs. Blanche Cooly and her husband Raymond J. Cooly, the day after the Terra Cotta wreck. I knew them and lived next door to them. I saw the Coolys twice that day, and I don't remember, but probably several times thereafter. I don't remember how many times—just on a friendly visit. I had a talk with Dr. Crook on the telephone about them. On my second visit I noticed on the chart kept in the hospital that these patients were in the charge of Dr. Crook. I did not know that he was in charge of Providence Hospital, and was not acquainted with him personally. That afternoon I called him on the phone and told him that the B. & O. authorities had given me authority to treat the Coolys, and I would be glad to work with him conjointly. He told me "Very well, I will be glad to have you come up for consultation." Thirty minutes thereafter Dr. Crook phoned to me, stating that the hospital authorities did not want any interference with these cases, and after that I did not see the Coolys again. Dr. Brooks authorized me to go there.

No cross examination.

Thereupon the defendant to further maintain the issues on its part joined called as a witness JAMES T. HENDERSON, who testified as follows:

In December and January, 1906 and 1907, I was chief clerk in the office of the terminal agent in the basement of the old building, on the lefthand side. Mr. Legge was home sick at the time of the accident and for several days afterwards. There was no one else employed in the office but myself. I do not know Dr. Crook and

never saw him before. I never had occasion to telephone to Mr. Egan for Dr. Crook, or any other gentleman, shortly after the Terra Cotta accident.

On cross examination witness said:

No one used that phone except Mr. Egan's assistant agents. They were coming in and going out there. They were there frequently conferring with Mr. Egan, and if he was not there, they would sometimes talk to him on the telephone. They had free access to the office. I was there all the time. Never went out, and these assistants could not have conferred with Mr. Egan without my knowing it, as the telephone was right in front of me all the time, and I never heard Dr. Crook's name mentioned. I sat there all day, and took my lunch there, and had no occasion to go out. Had a typewriter along side of me, but I did very little writing. I made it my business to hear everything said to these agents over the telephone as far as I could. About a week after the accident Mr. Egan

43 moved his headquarters over to Hotel Reno. I knew Jesse Carr; he would come in the office whenever he had any writing to do.

Thereupon the defendant to further maintain the issues on its part joined called as a witness A. A. SCHUTTE, who testified as follows:

I am assistant claim agent employed under Mr. Egan, and was acting in that capacity in January 1907. I had occasion to take some vouchers to Mr. Clinton M. Moore in settlement of his claim against the Railroad Company. I took the check to him at Mr. Egan's direction, on the 14th of February, 1907, I think.

Whereupon the witness was asked the following question:

Q. Did you ever engage the services of Dr. Crook on behalf of the railroad company to attend—— A. Dr. Crook, no sir.

Q. Did you ever instruct Dr. Crook on behalf of the Baltimore and Ohio Railroad Company, to attend any of the persons who were injured in the Terra Cotta wreck?

To which question plaintiff, by his counsel, objected.

The COURT: I don't know that there is any claim here that he did.

Mr. COLBERT: Counsel for plaintiff stated on the hearing for a postponement of the trial by us and in the presence of the Court that he would show employment of Dr. Crook by these assistant agents.

Mr. LAMBERT: My statement was that I would not associate Ass't Agent Butler with this case—I did not say that I would show
44 that Mr. Egan or Mr. Lamb or Mr. Schutte or any one else employed Dr. Crook.

Said objection was sustained by the court; to which ruling of the court the defendant then and there excepted, and said exception was duly noted on the minutes of the court.

The witness was thereupon asked the following question:

Q. Mr. Schutte, did you ever agree to pay Dr. Crook for services rendered to Mr. Clinton M. Moore or his wife, or Joseph Kunlo, or Mr. and Mrs. Cooly?

To which question plaintiff objected and the court sustained said objection, to which ruling of the court the defendant then and there excepted, and said exception was noted upon the minutes of the court.

The WITNESS: I took the vouchers to Mr. Moore and his wife at Providence Hospital. Mr. Moore was very particular before he accepted the check and signed his release, about certain charges. Among them were the hospital charges, the charges of an attorney's fee, and also the doctor's charges. The charges of the hospital, I stated in the presence of Sister Antonio, although she did not want to be a party to the agreement—I did tell the Sister that the hospital charges would be taken care of, and also as to the attorney's fee, but there was no agreement made as to the doctor's charges. I did not state to Mr. Moore or to the Sister or to anybody else that the Railroad Company would take care of the doctor's bill, and at that time I did not have any authority to make any such agreement, nor did I ever have any authority to make any agreement as to the doctor's charges. I did not negotiate this settlement; I was
45 simply called in by Mr. Egan to take the voucher up to Mr. Moore, see that the release was signed, and pay over the check for his wife and his son.

Cross-examination:

As one of Mr. Egan's assistants I go out and settle claims. I settled a good many of the Terra Cotta claims and obtained the releases therefor.

Thereupon the defendant to further maintain the issues on its part joined called as a witness JOSEPH H. HURNEY, who testified as follows:

I am in charge of the Bureau of Information at the Union Station. Was employed in the same capacity at the old B. & O. Station. My office was in the basement floor of the old building, on the left hand side of the entrance, next to Mr. Legge's office. Mr. Legge's phone and my phone were on the same line, and I had to notify his office of any call. I do not know Dr. Crook and never saw him in my life. I never heard of his telephoning to Mr. Egan about his services in connection with the injured persons in the wreck the day following the accident or about that time. I have never let any outsiders use my phone. My hours of work at the time of the accident were from eight o'clock in the morning until half past five or six in the evening. I have never seen Dr. Crook before in my life until today.

Cross-examination:

• The wreck occurred Sunday night. There were a good many people going around the station after the accident. There was quite a
crowd and some confusion. I could not say that a good
46 many people were using Mr. Legge's office. I saw people passing in and out of his office, but could not tell whether their business was in connection with the wreck or concerning other matters. I would not say that I could recollect everybody who passed in and out of that office. Dr. Crook might have passed in there, but

I never saw him before in my life. I might not have noticed him. While our phones are on the same line, I could not hear what was being said over Mr. Legge's phone unless I took up my receiver and listened, but his office invariably notifies us when they are going to use the phone. I did not have time to listen to every message that went over the phone from his office.

Thereupon the defendant to further maintain the issues on its part joined called as a witness LOUIS J. BATTLE, who testified that he was a physician and surgeon, practicing in the District of Columbia. Witness also testified in answer to hypothetical questions covering the cases of persons mentioned in the bill of particulars as to what would be fair and reasonable charges for services rendered in such cases by a surgeon, and the amounts fixed by him were very much less than those charged by plaintiff.

Witness also testified that if he were given general charge of a case as a surgeon, and if he was of the opinion that the case demanded the services of a masseur or of a consulting physician, he would first consult his patient's wishes in regard to the matter, tell him how much it would cost him, and if the patient agreed, he would call in such a masseur or consulting physician, but that he would not feel that by reason of the general employment he had authority to
47 employ a masseur or another physician without the consent of the patient, unless the patient was in a comatose condition and could not use his reasoning faculties. That if the patient had his faculties about him he would certainly consult his wishes in regard to the matter first.

Witness also testified as to the reasonableness of the charges made in the plaintiff's declaration for consulting physicians and masseur and the prices fixed by him were much less than those set out in plaintiff's declaration, and bill of particulars.

Similar testimony was given on behalf of the defendant by Dr. E. W. WATKINS, Dr. LLOYD B. BROOKS and Dr. E. J. GUNNING.

Thereupon the defendant to further maintain the issues on its part joined called as a witness FERDINAND H. LAMB, who testified as follows:

I am assistant claim agent of the B. & O. Railroad Company, employed by Mr. Egan. I never saw Dr. Crook or had a talk with him in my life. I saw Mr. Clinton M. Moore twice, once December 31st, at Providence Hospital, and the next time the day that he left the hospital, a few months later. I did not give Mr. Moore a check but was present when it was given to him by Mr. Fowler, his attorney. I did not say to Mr. Moore when the check was given to him that it was clear to him of all expenses; that we would bear the hospital expenses and his doctor's bill, and that the settlement was clear to him above everything. I had nothing to do with negotiation of the settlement. I simply went with Mr. Fowler to the hospital at the time
48 this settlement was closed. I did not tell Mr. Moore that we would pay his doctor's bills, and I had no authority to make any such statement.

Cross-examination:

I met Mr. Fowler at the B. & O. Depot. He came there to see Mr. Egan and to get the check I presume, and I went with him to the hospital. At the time of the settlement with Mr. Moore, Mr. Fowler and myself were in the room. There was a nurse who came into the room before we left, but she was not a sister—she was a nurse. I did not see any sisters in the room. I was there ten or fifteen minutes, and was concerned only about the settlement of Mr. Moore's claim. I had no talk with Mr. Fowler on the way to the hospital about Mr. Moore's case. I was instructed by Mr. Egan to go to the hospital and see if Mr. Moore was able to leave, and if he accepted his check.

This was the substance of all the testimony offered on behalf of the defendant.

Whereupon the plaintiff to further maintain the issues on its part joined called in rebuttal Sister BERCHMAN, who testified as follows:

I was in charge of Providence Hospital in December, 1906, and January and February 1907, and remember Mr. and Mrs. Moore being there as patients. I remember two occasions when settlements were made with Mr. Moore. I think the first was about the middle of February, and was made in Mrs. Moore's room. The second occasion was, I think, the 4th of March, and was made in Mr. Moore's room. On the first occasion, Mr. and Mrs. Moore, two gentlemen, Sister Antonio and myself were present. I understand one of the gentlemen was Mr. Fowler and the other's name I do not re-
49 member, but I was told he was an official in the employ of the railroad.

Thereupon the witness was asked the following question:

Q. Just state what was said in connection with making that settlement.

To which question counsel for defendant objected on the ground that the testimony was not proper in rebuttal, the plaintiff having gone into this matter in his case in chief, and on the further ground that the testimony is incompetent unless it is shown that the statement was made by an officer or an agent of the defendant company authorized to make such statement, and that the statement was made in the presence of the plaintiff, but the objection was overruled, to which ruling of the court the defendant then and there excepted, and said exception was noted upon the minutes of the court. It was further agreed that the same objection should apply to all testimony offered by the plaintiff in rebuttal along the line indicated by the examination of this witness, without repeating said objection and exception.

A. I had never seen these two gentlemen before, and I could not tell you now which one spoke. I remember Mr. Schutte on one of those occasions, but I do not know whether it was the first or the second. He told me that Mr. Moore wished me to hear the statement made by him in regard to the settlement for the accident and to assure me that all charges would be attended to by the Railroad Company; that the Railroad Company assumed all charges for the

50 expense of Mr. Moore, all hospital and doctor's charges. I could not give his exact words, but he spoke of hospital and doctor's charges, and said the railroad would assume those. On the occasion the other gentleman was there I think the statement was very much the same. I did not know his name, but have heard since that it was Lamb. He said that Mr. Moore wanted me to hear that the Railroad Company would settle all expenses of his case, and asked if I would be satisfied. Mr. Moore asked me if I was satisfied, and I said "Yes." Then the remark was made to me that I knew the Railroad Company would settle, or that the Railroad Company would do what they said they were going to do, and I answered "Yes," that I had always found the railroad fair in all their settlements.

Q. Was anything said on that occasion about doctor's bills? A. Just in the same way as on the first occasion, that they assumed all expenses for hospital and doctor's charges.

Cross-examination :

Mr. Schutte said he would pay all charges, but did not mention Dr. Crook's name; or say anything about him. He said he would pay hospital charges and doctor's charges. There was no specified charge of any kind mentioned, but it was a general statement. I testified that on the second occasion, when Mr. Lamb was there, he said he would pay all expenses and charges. I don't remember that I used the word expenses or charges, but I meant all of the expenses of the case. He did not mention Dr. Crook's name or say anything about any physician by name.

51 Redirect examination :

He did not mention doctor's bills and charges.

Whereupon the plaintiff to further maintain the issues on his part joined called in rebuttal Sister ANTONIO RILEY, who testified as follows:

I am in charge of the fourth floor of Providence Hospital. Was there after the date of the Terra Cotta wreck. I remember being in the room when a certain statement was made at the time of the settlement with Mr. and Mrs. Moore. Mr. and Mrs. Moore, two gentlemen and Mr. Barton and myself were there. The one who spoke and represented the Railroad Company was rather a large man. The other was not quite so large. The man who represented himself as a railroad official made the statement that he had offered Mr. Moore a certain amount of money and at the same time he said he would pay the hospital — and assume all expenses. That is the best of my knowledge as to what I remember. I do not remember anything being said about doctor's bills. That was the only occasion that I was present at a settlement, and I do not remember what Mr. Moore said before he had a conversation with the railroad official concerning the injuries received, but I don't remember what was said.

Cross-examination:

Q. As you recollect it, there was no statement made by this large man, whom we will call Mr. Schutte, that he would pay any doctor's bills? A. All that I said was all that I remember of his saying; that he would pay the hospital and assume all expenses; and
52 also offered this sum of money to Mr. Moore. That's all I remember.

Whereupon the plaintiff to further maintain the issues on his part joined called as a witness ANNA M. MOORE, who testified as follows:

I was injured in the Terra Cotta wreck, and was at Providence Hospital nine weeks. Dr. Crook attended me. I was present at the settlement of my case against the railroad. That was about the middle of February. Mr. Fowler, Mr. Schutte, Sister Antonio, Sister Berchman, my husband and myself were present.

Thereupon witness was asked the following question:

Q. Tell us what was said by Mr. Schutte in connection with making that settlement?

To which question counsel for defendant objected for the same reasons set forth in the objection to the testimony of the witness Sister Berchman, but the objection was overruled and exception noted.

The WITNESS: When the check was brought in to me, Mr. Moore asked me if I was satisfied with the amount, and I said not unless it will be clear of all expenses, including hospital and doctor's bills and everything. Mr. Schutte was present when the statement was made. Mr. Moore was called from the room for a private conversation with Mr. Fowler, and I said to Mr. Schutte "I want it fully understood that that will include all doctor's bills" and he said "Why Mrs. Moore we always pay the doctor's bills. I have just returned from the Northwest, where we have settled claims similar to yours, and we paid
53 all of the doctor's bills." I made it a special point to ask him if that would include the doctor's bills and he told me it would.

Cross-examination:

Dr. Crook's name was not mentioned and nothing was said about his bill. I had not seen any bill of his at that time. There were quite a number of house physicians that attended my husband and myself. Dr. Bailey was the chief one. They acted under Dr. Crook's direction.

Redirect examination:

Dr. Crook was in charge of my case.

Whereupon the plaintiff to further maintain the issues on his part joined, called in rebuttal JOHN A. KUNLO, who testified as follows:

I was in the Terra Cotta wreck. I was injured and so was Joseph Kunlo. I had a settlement with the Railroad Company the latter part of February 1907 or the first part of March. The settlement

was made at the Casualty Hospital, for the little boy Joseph Kunlo and two children who were killed. Mr. Fowler made that settlement for me. I had a talk at the Hospital with Mr. Egan.

Thereupon the witness was withdrawn from the stand, and C. W. EGAN recalled by the plaintiff for further cross examination, who said:

I remember the occasion of the settlement with Mr. Kunlo at the Casualty Hospital. I did not make any statement on that occasion on behalf of the Company that I would assume Mr. Kunlo's doctor's bills. I said I would assume his expenses—hospital expenses, which I did, but not the doctor's bills. I was acting on behalf of the Railroad Company, and Mr. Fowler was present representing Mr. Kunlo. I agreed upon a settlement with Mr. Fowler. My negotiations were with him.

Thereupon the witness JOHN A. KUNLO was recalled, and was asked the following question:

Q. Now, I will ask you to state whether Mr. Egan on that occasion agreed to assume the doctor's bill for the injuries to your son.

To which question counsel for defendant objected for the reasons set forth in the testimony of the witness Sister Berchman, but the objection was overruled, and exception noted.

The WITNESS: Before I signed the release he said "We pay the doctor and the hospital and the undertaker." He mentioned each one before he made settlement.

Cross-examination: .

Mr. Fowler was my attorney and the amount paid in settlement was arranged between Mr. Fowler and Mr. Egan. Mr. Egan said he would pay the hospital charges and the undertaker's bill and he paid them. He did not pay the doctor's bill, although he said he would do so. He did not mention Dr. Crook's name, but he mentioned doctor's bills especially.

Thereupon the plaintiff to further maintain the issues on his part joined called as a witness CHAPMAN W. FOWLER, who testified as follows:

I am an attorney and had charge of the settlement of the claims of Clinton M. Moore, Mrs. Anna Moore and their son. I had charge of the claim of Mr. Kunlo, for his son Joseph, and two children who were killed. The settlement of Mrs. Moore's claim took place on February 14, 1907, at Providence Hospital. The settlement of

Mr. Moore's claim took place afterwards, either on the 4th or 5th of March, I am not sure which. On the 14th of

February Mr. and Mrs. Moore, Sister Antonio, Sister Berchman, Mr. Schutte and myself were present. Mr. Schutte left the B. & O. depot with instructions from Mr. Egan as to settlement.

Thereupon witness was withdrawn from the stand, and A. A. SCHUTTE recalled for further cross examination, and testified as follows:

I remember Mr. Fowler being in the office on the morning of February 15th, but at the time he was there there was no conversation between Mr. Egan and myself. On February 12th Mr. Egan gave me Mrs. Moore's check and at that time he gave me instructions as to settlement, and not on February 14th or 15th, when Mr. Fowler was present. Mr. Fowler was not present on any day that Mr. Egan gave me instructions about a settlement.

Whereupon CHAPMAN W. FOWLER was recalled for further direct examination and testified as follows:

When I went to the depot I met Mr. Egan and we went outside and saw Mr. Schutte, who was standing near the magazine counter, in the lower room. Egan called him in and said "I want you to go with Mr. Fowler to Providence Hospital and settle this claim." He said "This is a net claim" and he gave Schutte the release and the check then in my presence, and Schutte and I walked over to Providence Hospital, and the settlement took place. When we got there, Mr. Moore objected vigorously to signing the release unless it was incorporated in it the promise to pay certain charges, which charges were hospital and doctor's charges. After some little

56 talk I said I would get one of the sisters to come in and listen to the conversation. I went out and got Sister Antonio and she said "I think you had better get Sister Berchman too" so I got Sister Berchman, and finally when the settlement took place, in the room Mr. and Mrs. Moore, Sister Berchman, Sister Antonio, Mr. Schutte and myself were present. Mr. Moore said "Mr. Schutte I would like to have you state in the presence of Sister Berchman and Sister Antonio that the railroad, in addition to paying me this check, will assume the hospital expenses and doctors' charges" and it was so stated by Mr. Schutte. Then Sister Berchman I think made some reference to the railroad. He made a reference to the railroad always taking care of those things, and she smiled very pleasantly and said "Yes" that she found the railroad very agreeable, or some such statement as that. The check was then paid over by Mr. Schutte and the release signed. So far as my connection with the settlement of this case was concerned, I never had any of the checks. Mr. Schutte was sent there by Mr. Egan to settle this claim. My dealings in the whole matter were with Mr. Egan up to the time the check was passed over. I was present at the second settlement in March, in Mrs. Moore's room. I met Mr. Lamb at the station and went with him to Providence Hospital. Mr. Lamb had the check. He was directed the same as Mr. Schutte was, to go with me to Providence Hospital and settle this claim. Mr. Moore, Mr. Lamb, myself, Sister Berchman were present. Very much the same conversation as occurred at the other settlement took place. Mr. Moore said "Mr. Lamb, I want you to state in the presence of Sister Berchman that the B. & O. Railroad Company will pay all

57 the doctors' expenses and hospital expenses. The statement was made by Mr. Lamb, and the release was then handed

to Mr. Moore and he signed it and got his check from Mr. Lamb. I remember Dr. Crook and Mr. Egan being present in my office on one occasion. I don't recall the date, but think it was about the beginning of spring. It was some time after my connection with these cases had begun, and after the settlements. I was present at the time settlement was made with Mr. Kunlo. The dealings in that case I had directly with Mr. Egan. There were certain sums offered, clear sums, to Mr. Kunlo. I had a talk with Mr. Kunlo about it, and stated it to him, and he told me to see his wife. I saw her, and he then sent word that it was satisfactory, and he would accept it. We then met Mr. Egan on the morning of the 8th of March, and he and I went to Casualty Hospital together. He then stated to Mr. Kunlo, before the settlement, that it was a settlement outside of all expenses, that the Railroad Company would pay the doctors' bills and the hospital expenses and the funeral expenses, and upon that statement the settlement was made.

Cross-examination:

I have been practicing law three years and am 32 years old. I am related to Dr. Crook by marriage. He is my wife's uncle. At the conversation between Egan and Schutte at the B. & O. Station, Egan told Schutte to accompany me to Providence Hospital and settle the claim over there, and that it was a net settlement. Those were the instructions. He said it was a net settlement. The check had already been made out for a lump sum. He did not say to me that he would pay doctors' bills, and I don't recall any special instructions on that occasion that he gave Schutte, only that
58 a settlement was a net settlement. Egan then gave the voucher and check to Schutte to be delivered upon the signing of the release. Nothing was said about Dr. Crook except the statement made by Mr. Schutte at the hospital. I did not say anything to Egan on that occasion about Dr. Crook's bill. When Schutte made his statement at the hospital I did not mention Dr. Crook's name. Dr. Crook's name was never mentioned, and nothing was said about the amount of the bill because none of us knew about the bill, or at least I did not.

On re-direct examination witness said:

There were several doctors' reports made out at the request of Mr. Egan, which I had Dr. Crook furnish to my stenographer and I furnished them to Egan. I don't remember what cases the reports referred to. I think one was with reference to Joseph Kunlo, and I believe Mr. and Mrs. Moore's cases were the other two. I do not know the exact date they were furnished, but it was prior to March 8th.

Whereupon the plaintiff to further maintain the issues on his part joined called in rebuttal BLANCHE I. COOLY, who testified as follows:

I was injured in the Terra Cotta wreck, and was treated at Providence Hospital by Dr. Crook. I know Dr. Monroe, and knew him before he became a doctor. He never treated me at Providence Hospital. I remember seeing him in Providence Hospital twice.

Thereupon the plaintiff to further maintain the issues on his part joined took the stand in person in rebuttal, and testified as follows:

59 I have heard Dr. Monroe's testimony. I received one telephone communication from him, but I did not call him up again on the phone. I did not say afterward to him about the hospital authorities not allowing him to come there or anything of that kind. I never sent such a message. I did not telephone him about thirty minutes after receiving the phone message from him. I told him that I would meet him there the next day, and then I talked with Mr. Egan over the phone, and he said he would call the other doctors off. Dr. Monroe did not come to the hospital the next morning. I was around there and said that if he came to let me know, and I would see him. I don't know why he did not come. I did not send a message to him, and never spoke to him at all, except when he called me up on that one occasion.

Cross-examination:

Dr. Monroe never received a message from me saying that the hospital authorities would not allow interference with cases there, because they would allow it. The hospital would not object to such a thing. At the time of his talk with me on the telephone, which I have testified to, I told him I would be glad to meet him. I did not immediately after receiving his telephone message go to the B. & O. Station and get in communication with Mr. Egan. It was some time afterwards. I don't know how long. I simply wanted to know whether Egan wanted this doctor to have the cases or whether he wanted me. I did not know Egan at the time, don't know whether I ever heard of him. I went down to the station to get into communication with a man having authority. I saw the two witnesses on the stand who said they were in the information booth and in Mr. Legge's office, but neither one of them put me in communication with Egan. I don't know the name of the man who put me in communication with Egan. He was in the office. I don't remember whether I ever saw him before or have seen him since.

60

And this was the substance of all the testimony offered on behalf of the plaintiff and defendant.

Whereupon the plaintiff asked the court to instruct the jury as follows:

If the jury believe from the evidence that Dr. Crook was authorized by the railroad company through its duly authorized agents to take charge of the patients referred to in this case, and performed the services in that connection necessary to bring the patients through to recovery, then their verdict should be for the plaintiff in such sum not exceeding the amount sued for and interest, as in view of the evidence they believe would fairly compensate the plaintiff for services rendered.

Said prayer was objected to because of the statement therein contained concerning the allowance of interest, but the court overruled said objection and granted said prayer; to which ruling of the court

the defendant then and there excepted, and said exception was duly noted upon the minutes of the court.

Thereupon the defendant requested the court to instruct the jury as follows:

4. The jury are further instructed that the plaintiff can not recover in this action upon any promise, express or implied, made by the defendant or any of its agents having authority in the premises, to any person other than the plaintiff himself, even though the jury may find that such promise, if made at all, was made for the benefit of the plaintiff.

But the court refused to grant said prayer; to which refusal the defendant then and there excepted, and said exception was duly noted upon the minutes of the court.

The defendant also requested the court to instruct the jury as follows:

6. The jury are further instructed that even though they should find from all the evidence that the plaintiff is entitled to recover a verdict in this case on the ground that the plaintiff was employed by the defendant or one of its agents, authorized so to do, such employment of the plaintiff, if any, by the defendant did not justify the plaintiff in securing the services of other physicians or persons without authority from the defendant or its authorized agents so to do.

But the court refused to grant said instruction; to which refusal defendant excepted, and said exception was then and there duly noted upon the minutes of the court.

The defendant also requested the court to instruct the jury as follows:

9. The jury are further instructed that the defendant can not be held liable in this cause solely on account of the statements alleged to have been made by the assistant agents A. A. Schutte and F. H. Lamb, as to an agreement by the defendant to pay the doctors' bills sued for in this cause, unless they find that said assistant agents had authority from the defendant to make such statements.

But the court refused to grant said instruction, to which refusal the defendant excepted, and said exception was duly noted upon the minutes of the court.

Thereupon the court, of its own motion, instructed the jury as follows:

The plaintiff, Doctor Harrison Crook, brings this suit against the Baltimore and Ohio Railroad Company, to recover for services which he claims he rendered at the request and instance of the railroad company, and to recover for the services of assistants employed by him in that connection, on behalf of certain injured victims of the Terra Cotta wreck disaster on December 30, 1906.

When you retire to the jury room you will take with you this declaration. You will find attached to it a bill of particulars which sets out, in detail, the persons to whom these services were rendered, the time covered in the rendition of these services, and the amount charged by the plaintiff for each particular person, and the aggre-

gate of such charges. That will be the only paper you will have with you.

There are but two general questions for you to determine here. The first is, was the plaintiff employed by the defendant railroad company to render these services. The second is, if you find that he was so employed, what services did he render, and what is the reasonable value of those services.

63 The burden of proof is upon the plaintiff to satisfy you by a fair preponderance of the evidence that the plaintiff was employed by the defendant, to render the services sued for; and if you should find that the plaintiff has failed to meet this burden of proof, then of course your verdict should be for the defendant. That is the rule that applies, in these civil cases. You are not required to have a fact established beyond a reasonable doubt, as in a criminal case. The burden, in this case, is upon the plaintiff to satisfy you by a preponderance of the evidence that the services rendered by him were rendered on behalf of the railroad company, that is, at the request of the railroad company and under employment by the railroad company; and also that his services are reasonably worth the amount for which he sues.

So far as the first proposition is concerned, viz: was the plaintiff employed by the defendant to render these professional services, it will be your duty, in determining that question, to look carefully at all of the facts and circumstances of the case, with a view, first, of determining whether there was any specific agreement or promise made between the plaintiff and the defendant that the plaintiff should render these services to these people and that the defendant should pay for them.

If you should find a specific promise or agreement to that effect, then it will be your duty in this case to return a verdict for the plaintiff, because that would constitute a contract.

Now, a contract may be established in one of several ways. It does not follow that because there is no evidence of a specific agreement or contract between two persons that a contract does
64 not exist, because you may infer the existence of a contract between A and B by the facts and circumstances attending particular transactions in which they have been engaged, and which you are called upon to determine. In general, there must be evidence that the defendant requested the plaintiff to render the services or assented to receiving their benefit, under circumstances negating any presumption that they should be gratuitous. The evidence usually consists either of an express request preceding the services, or of circumstances justifying the inference that the plaintiff, in rendering the services, expected to be paid and the defendant supposed or had reason to suppose or ought to have supposed that he so expected to be paid, and still allowed him to go on with the services, without doing anything to disabuse his mind of that expectation to be paid, or, third, proof of benefit received, not under an agreement that the services should be gratuitous, and followed by an express promise to pay. Those, generally speaking, are the ways

in which the existence of an implied contract or the existence of a contract by implication or inference is established.

Now, gentlemen, before the plaintiff can recover he must satisfy you, by a preponderance of the evidence, that he was employed by the defendant to render medical and surgical services to these injured passengers, and the fact of such employment must be established to your satisfaction, either by the direct or the implied authority of the defendant.

You may find such expressed or implied authority from the facts and circumstances of the case, including what was said by and
65 between the plaintiff and the duly authorized agents of the defendant, if anything, upon that subject, or rather upon the subject of the plaintiff's services, bearing in mind, however, that the declaration, if any, made by the defendant's agents to a third person, of an intent on the part of the defendant to pay the plaintiff for his professional services would not, as a matter of law, constitute a promise to pay; and no right to recover in this action could be based upon such a declaration or promise, unless such declarations and promise were made to the plaintiff himself, and not to a third person.

You are further instructed that the plaintiff cannot recover in this action unless he satisfies you, by a preponderance of the evidence, that the defendant, or some one or more of his agents having authority so to do, employed the plaintiff to perform the services referred to and described in the bill of particulars filed herein.

This is, in substance, saying to you what I have already said, and is the substance of one of the instructions I have granted.

Again, gentlemen, if you should believe from the evidence that Doctor Crook was authorized by the railroad company, through its duly authorized agents, to take charge of the patients referred to in this case and performed the services in that connection necessary to bring the patients through to recovery, then your verdict should be for the plaintiff in such sum, not exceeding the amount sued for, and interest as in view of the evidence you believe would fairly compensate the plaintiff for the services rendered, including
66 reasonable compensation to the assistants employed by the plaintiff, in connection with the treatment of said patients—providing you find that there was any authority to employ such assistants.

I have said that, in that situation, it would be your duty to return a verdict for the plaintiff, not exceeding the amount sued for, including interest. So far as interest is concerned, it is entirely a matter under your own control. Should you find for the plaintiff, either for the whole or any part of your claim, you may or may not allow interest. That is a matter entirely within your discretion.

Again, if you believe from the evidence that Doctor Crook was authorized by the railroad company, through its agents duly authorized, to take charge of the patients referred to in these proceedings, or that having taken charge of said patients and treated them, the railroad company accepted the benefit of the services rendered by the plaintiff to said patients and agreed to pay therefor, then their vir-

dict should be for the plaintiff, for such sum, not exceeding the amount sued for—and interest as I have stated—the matter of interest being a subject for your own judgment, as you believe would fairly compensate the plaintiff for services rendered, including as I have already said reasonable compensation to the assistants employed by the plaintiff in connection with the treatment of said patients—provided that the jury find that there was any authority to employ such assistants.

Now, gentlemen, if you find from the evidence that the defendant, through its duly authorized agents, employed Doctor Crook
67 on its behalf to render medical and surgical services to these several injured persons named in the plaintiff's bill of particulars, or that the defendant subsequently, through its said agents, approved and ratified the rendition of such professional services, then it would be your duty to return a verdict for the plaintiff, for the reasonable value of such services, including compensation for such reasonable expenses and expenditures incurred by the plaintiff as you may find from the evidence was reasonably necessary and proper for the masseurs and consulting physicians, providing you find from the evidence that, under the character and quality of the plaintiff's employment, he was reasonably and justly entitled to employ such assistants, and to charge such fees and expenses to the defendant.

In determining the character and quality of the plaintiff's employment you must be guided by all the facts and circumstances in the case bearing upon the subject.

Now, gentlemen, you are the sole judges of the questions of fact submitted to you by the court and of the credibility of each and every witness in this case, and you are at liberty to give the testimony of each witness such weight and only such weight as you may think it is entitled to.

Of course it is your duty to proceed upon the hypothesis that each of these witnesses has intended to tell the truth, and if you can reconcile the differences that exist in this case, as they exist in most cases tried by juries, between the various witnesses who are called to testify in the case—if you can fairly reconcile these differences and discrepancies upon the theory that each and all of the witnesses are
68 trying to tell the truth, it is your duty to do so. But if you are satisfied that anybody who has been called to the stand has intentionally or wilfully made a statement as to a fact which he knew to be otherwise than true, then you have the right to reject the entire testimony of such witnesses, or so much thereof as, in your judgment, ought to be rejected. So that you will understand that you are the sole judges not only of the weight of the evidence as a whole, but of the weight and credit to be given to each individual witness called to the stand. You must be careful not to be influenced by any bias or prejudice you may have for or against either party to this suit, or anybody connected with it. You must be guided solely by the evidence, as it has reached you from the witness stand.

Again, if you believe from the evidence that the plaintiff was em-

ployed by the defendant to attend Mrs. Anna M. Moore, Clinton M. Moore, Blanche Cooly, Raymond J. Cooly and Joseph Kunlo, or any of them, and is entitled to recover for services rendered them or any of them, then and in that event you are not bound to accept the plaintiff's own estimate as to the value of his services, nor would the mere opinions of other physicians as to what the plaintiff's services were worth preclude you from exercising your own judgment and ideas upon the subject. You have the right to consider the nature of the services rendered, the time occupied in their performance, and other attending circumstances, and apply to them your own experience and knowledge of the character of such services; and the judgment of experts is not to be accepted by the jury in place of their own judgment in the matter.

69 That is, you are not to set aside your own judgment; but you are to weigh their opinions and their judgment by your own judgment, experience and observation, and if you find that the plaintiff is entitled to recover at all, he is entitled to recover what the services so rendered by the plaintiff, in your judgment as a jury, are reasonably worth.

Lastly, you must bear in mind that the defendant here, the Baltimore and Ohio Railroad Company, is entitled to the same consideration at your hands as any individual or any private citizen, and you are also instructed that if you find from all the evidence that the plaintiff was entitled to recover anything, the amount of compensation which you award him should not, in any degree, depend upon the wealth of the Baltimore and Ohio Railroad Company or the degree of its ability to pay or not to pay for anything.

In other words, gentlemen, you have been sworn to try this case and to render a verdict upon the evidence that has been submitted to you in the course of this trial and under the instructions of the court applicable thereto, and you must do that without regard to what you might think might be the opinion of the court or of anybody else as to what your verdict should be. You must decide this case for yourselves, and you have no right to be influenced by what anybody else, or what you may imagine anybody else outside of the jury may think your verdict should be. To do otherwise would be to violate your oaths.

So that you must not, for a moment, allow the fact that the plaintiff here is an individual and the defendant is a corporation to have the slightest influence upon your minds, in the rendition of your verdict.

70 I feel confident, as I look into your faces, that you are not the character of men who will forget the obligations of your oaths and be influenced in the slightest degree by anything other than the testimony.

When you have retired and arrived at your verdict you will select some one of your number to act as your foreman and to report your verdict upon coming into court.

And thereupon, and before the jury retired to consider their verdict, the defendant excepted to so much of the court's oral charge as stated that the jury may allow interest in their discretion upon what-

ever amount may be found, whether the whole amount claimed is found or not, and to so much of the oral charge which instructs the jury that they may take into consideration the services rendered by the masseur and consulting physicians; and to so much of the charge which instructed the jury that they can or must proceed upon the basis that every witness who is tendered is telling the truth; and to so much of the oral charge which states that a benefit received and thereafter an express promise to pay may raise or create a contract; which exceptions were duly noted upon the minutes of the court.

And all of the exceptions hereinbefore referred to were noted on the minutes of the court as they were severally taken and the defendant prayed the court to sign and seal this its bill of exceptions, to have the same force and effect as if the rulings herein contained were set out in separate bills of exceptions, which is accordingly done this 14th day of May 1908, now for then.

THOS. H. ANDERSON, *Justice.*

This is satisfactory.

W. J. LAMBERT,
Y,

Att'y for Pl'tff.

71 *Directions to Clerk for Preparation of Transcript of Record.*

Filed May 8, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49755.

HARRISON CROOK

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY.

The Clerk will please include in the record on appeal the following pleadings:

1. Declaration, &c.
2. Pleas of defendant.
3. Joinder of issue.
4. Amended Bill of Particulars.
5. Verdict for plaintiff.
6. Prolongation of term for settling Bill of Exceptions.
7. Motion for new trial overruled and judgment.
8. Appeal bond.

GEORGE E. HAMILTON,
Attorney for Defendant.

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Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 71 both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 49755 at Law, wherein Harrison Crook is Plaintiff and The Baltimore & Ohio Railroad Company, a corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 22nd day of June, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1917. Baltimore and Ohio Railroad Co., a Corporation, appellant, vs. Harrison Crook. Court of Appeals, District of Columbia. Filed Jun- 23, 1908. Henry W. Hodges, clerk.